

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>				1. REQUISITION NUMBER W90XW8-3268-2001		PAGE 1 OF 51	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER W81GYE-04-R-0020	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME ROBIN THOMAS		b. TELEPHONE NUMBER (No Collect Calls) 703-428-2061		6. SOLICITATION ISSUE DATE 31-Oct-2003	
9. ISSUED BY CODE MT01B11  MILITARY TRAFFIC MANAGEMENT COMMAND MTAQ-G GLOBAL INTERMODAL DIST. DIV., ROOM ALEXANDRIA VA 22332-5000  TEL: FAX:		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input checked="" type="checkbox"/> SET ASIDE: 100% FOR <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input type="checkbox"/> 8(A)  SIC: 4200 SIZE STANDARD: \$21.5		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS	
				13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>			
				13b. RATING			
				14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP			
15. DELIVER TO CODE		16. ADMINISTERED BY CODE					
<b>SEE SCHEDULE</b>							
17a. CONTRACTOR/ OFFEROR CODE		18a. PAYMENT WILL BE MADE BY CODE					
TEL. FACILITY CODE							
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/ SERVICES		21. QUANTITY		22. UNIT	
		<b>SEE SCHEDULE</b>					
						23. UNIT PRICE	
						24. AMOUNT	
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED.						ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED.						ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>0</u> COPIES <input type="checkbox"/> TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT: REFERENCE <input type="checkbox"/> OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)		31c. DATE SIGNED	
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) TEL: EMAIL:			
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED		33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER		35. AMOUNT VERIFIED CORRECT FOR	
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		40. PAID BY	
				42a. RECEIVED BY (Print)			
				42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449 (10-95)  
Prescribed by GSA  
FAR (48 CFR) 53.212

## Section SF 1449 - CONTINUATION SHEET

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0001	Puerto Rico Motor Carrier Contract FFP Contractor shall provide all the resources and equipment necessary to perform the required services indicated in the Performance Work Statement (PWS) for the movement of conatiners and/or breakbulk services, inclduing pickup, delivery, receiving cargo at a warehouse for stripping, consolidating and redelivery and provide containers if required. Base Period of Performance (1 April 2004 - 31 March 2005) PURCHASE REQUEST NUMBER: W90XW8-3268-2001	1	Lot		
					MAX NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0002 OPTION	Puerto Rico Motor Carrier Contract FFP Contractor shall provide all the resources and equipment necessary to perform the required services indicated in the Performance Work Statement (PWS) for the movement of conatiners and/or breakbulk services, inclduing pickup, delivery, receiving cargo at a warehouse for stripping, consolidating and redelivery and provide containers if required. First Option Period of Performance (1 April 2005 - 31 March 2006) PURCHASE REQUEST NUMBER: W90XW8-3268-2001	1	Lot		
					MAX NET AMT

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0003 OPTION	Puerto Rico Motor Carrier Contract FFP Contractor shall provide all the resources and equipment necessary to perform the required services indicated in the Performance Work Statement (PWS) for the movement of containers and/or breakbulk services, including pickup, delivery, receiving cargo at a warehouse for stripping, consolidating and redelivery and provide containers if required. Second Option Period of Performance (1 April 2006 - 31 March 2007) PURCHASE REQUEST NUMBER: W90XW8-3268-2001	1	Lot		
					MAX NET AMT

FOB: Destination

## INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	N/A
0002	N/A	N/A	N/A	N/A
0003	N/A	N/A	N/A	N/A

## DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	POP 01-APR-2004 TO 31-MAR-2005	N/A	N/A FOB: Destination	

0002	POP 01-APR-2004 TO 31-MAR-2005	N/A	N/A FOB: Destination
0003	POP 01-APR-2004 TO 31-MAR-2005	N/A	N/A FOB: Destination

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### 1.0 Special Terms and Conditions

#### 1.1 Effective Dates

This contract shall be in effect for all cargo received on 01 April 2004 through 31 March 2005 for the base year and 01 April 2005 through 31 March 2006, Option Year 1, providing the option is exercised and 01 April 2006 through 31 March 2007 for Option Year 2, providing the Option is exercised.

#### 1.2 Justification for Inclusion of Liquidated Damages

Liquidated Damages are provided for in RFP W81GYE-04-R-0020, in accordance with FAR Part 11.502, since both (1) time of delivery or performance are such important factors in the award of the contract that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent. (2) The extent or amount of such damage would be difficult or impossible to ascertain or prove. The Contracting Officer (CO) has considered the probable effect of such matters as pricing, competition, and the costs and difficulties of contract administration. Further, the application of liquidated damages for non-performance of service contract provisions is a recognized regulatory practice for the intermodal transportation industry.

#### 1.3 Failure to Pick-up and Remedies

When the MC fails to pick-up a container by the designated date and time, and as a result there is not reasonable time to allow for the shipment to arrive at the consignee by the RDD, the MC shall be liable either for the payment of liquidated damages or for the reimbursement of expenses incurred by the Government to obtain alternate transportation of the container.

#### 1.4 Calculation of Liquidated Damages and Alternate Transportation Services

If the MC fails to pick-up within the designated time frame, the MC shall be liable for either the payment of liquidated damages or for the reimbursement of excess costs incurred by the Government to obtain alternate motor transportation service, whichever is applicable. Liquidated damages shall be equal to the detention charges for that equipment, computed at the rates set forth in Paragraph 4.4.2 "Detention Charges for each day or part thereof from the date of the originally scheduled pickup to the date that alternate services were able to be secured. However, if the OC or the consignee elects to employ alternate motor transportation service to move the container to the consignee, the MC shall be liable for any expenses or costs incurred by the Government above the expenses that would normally would have been incurred had the container been picked-up by the designated date and time.

#### 1.5 Contracting Officer

The Contracting Officer (CO) who shall perform contract administration for this contract is located at Military Traffic Management Command, Attn: MTAQ-GI, Room 12S67-64, 200 Stovall Street, Alexandria, VA 22332-0405, (703) 428-3080 or FAX (703) 428-3325.

#### 1.6 Contract Type

This contract is a Firm Fixed Price, Indefinite Delivery/Indefinite Quantity contract as defined in FAR Part 16.5.

#### 1.7 Option Year Minimums

The Government commits to a minimum guarantee of cargo for each designated zone which is sufficient cargo to ensure full compliance with FAR 16.504(a) (2), more than nominal quantities and economically viable revenue

based to support any accepted service. See paragraph 1.8 and 1.9 below. One (1) FEU is considered to be a nominal amount (52.216-19).

#### **1.8 Minimum Cargo Commitment for the Customer Service and Dedicated Zone 1 and 7 Section:**

The Government commits to ship under the Customer Service/Dedicated Zone Section contract a minimum of 800 containers and 2700 Measurement Tons (MT) of breakbulk cargo to/from the port of San Juan throughout the inland Island of Puerto Rico for the base year. If the Government meets its cargo commitment prior to the expiration of the contract, the Government may ship up to an additional 800 containers and 2700 MT of breakbulk cargo under the same rates, terms and conditions. In the event the selected MCs for this Customer Service/Dedicated Zone contract is unable to transport the minimum volume guaranteed, the Contracting Officer reserves the right to make other arrangements to meet such requirements. The Customer Service/Dedicated Zone Section contract will be awarded to one MC only.

#### **1.9 Minimum Cargo Commitment for the General Section other than the Customer Service/Dedicated Zone contract:**

A minimum volume of cargo is guaranteed under the General Section among all holders of contracts awarded under the RFP. The Government commits to ship a minimum of 200 containers and 1000 MT's of breakbulk cargo, (excluding POVs) throughout the Island of Puerto Rico in the base year. **This includes all zones except Zones 1 and 7.** In the case where the Government fails to ship the minimum guaranteed cargo, the Government will pay the Contractor seventy five (\$75) dollars per shortfall for containers and five (5) dollars per MT shortfall for breakbulk in place of actual damages.

### **2.0 General**

#### **2.1 Transportation Services**

The Contractor, a motor carrier, shall provide all resources necessary to perform the Performance Work Statement (PWS). The MC shall maintain trucking services as required under the laws and regulations of the United States and the Commonwealth of Puerto Rico, throughout the period of the contract. The MC shall provide equipment for the movement of containers and/or breakbulk service, including pickup, delivery, receiving cargo at a warehouse for stripping, consolidating and redelivery and MC provided containers if required.

#### **2.2 Normal Government Business Hours/Hours of Operation/Business Day**

(a) Normal Government Business Hours are considered to be Monday through Friday, 0800 hours through 1700 hours, with U.S. Federal Holidays excepted. Such days are defined as Business Days. Where U.S. Government offices also observe local holidays, e.g., Puerto Rico, etc., these holidays are also excluded from Normal Government Business Hours. All references in this contract to compliance or observance of Normal Business Hours will use this definition unless otherwise stated.

(b) In addition, MCs are expected to be aware of local office hours of operation for each U.S. Government facility with which they will transact business, and will schedule transactions accordingly. Hours of Operation for Facilities are provided for at Attachment 6.

#### **2.3 Electronic MC Payment**

MCs will be paid through Automated Fund Transfer (AFT) using the PowerTrack system, a product of US Bank, Inc. Payment will be made after cargo has been lifted. A satisfactory comparison of shipping instructions and MC lift reports will be the basis for effecting payment to MCs. All MCs a party to this contract must have an agreement with US Bank and be PowerTrack certified for the electronic payment of transportation services. See Attachment 5 Power Track Rules for details of Sealift Carrier Payment via PowerTrack.



## **2.4 Additional Service**

In the event that a MC and/or MCs, are suspended from service or terminated for default under this contract such that the Government is no longer able to meet its requirements for delivery of cargo, the Government reserves the right to solicit for additional services under this contract from motor carriers not contractors hereunder to provide the service.

## **2.5 Dead Freight**

The Government shall not be liable for payment of dead freight.

## **2.6 Shipments By Authorized Agents of The Government**

### **2.6.1 Ocean Carriers as agent of the Government**

The Ocean Carrier (OC) is designated as an authorized agent of the Government under this contract. The OC must assume all responsibilities for ordering motor MC services for all cargo moving inland from the Port of San Juan throughout the Island zones.

### **2.6.2 Dispatching of Motor Carriers in Puerto Rico**

Once the containers are cleared for pick-up, the OC, acting as an authorized agent of the Government, must order motor MC service in accordance with the Motor Carrier Contract (MCC) specified by MTMC. The OC must ensure that motor MCs are notified in a timely manner and that the pick-ups are completed within eight (8) hours of notification as specified in the MCC.

### **2.6.3 Shipments to Consignees**

The OC must use the MTMC motor carrier contractors designated to make shipments to consignees.

### **2.6.4 Utilization of Motor Carriers**

The OC must utilize the MTMC negotiated MC contracts for inland transport within Puerto Rico. The OC must use the negotiated contracts for 100% of shipments. The goal for customer wait time (CWT) is less than two (2) hours from the agreed-upon delivery time and date.

### **2.6.5 Motor Carrier management activities:**

The OC, acting as the agent of and as directed by MTMC, will order and report on inland transport shipments within Puerto Rico.

### **2.6.6 Reserved**

### **2.6.7 Other Carrier Participation**

A Carrier who, after the date for responses to the Request for Proposals (RFP) which resulted in this contract, begins operations on the zones but did not submit an offer under that RFP, will be considered for a contract at a negotiated rate level, but such Carrier's rates will not be utilized except as necessary when capability from Carriers which already hold a contract is not available to meet the requirement.

## **2.7 Multiple Award Task Order Contract and Delivery Order Contract Ombudsman**

In accordance with FAR 16.505(b)(5), the following individual has been appointed as ombudsman for multiple award task order and delivery order contracts issued by this organization:

Mr. Francis Giordano  
Military Traffic Management Command  
Attn: MTAQ, 12S67  
200 Stovall Street, Hoffman Building II  
Alexandria, Virginia 22332-5000  
Telephone: 703-428-3300  
Facsimile: 703-428-3364  
Email: [giordanof@mtmc.army.mil](mailto:giordanof@mtmc.army.mil)

### **2.7.1 Reviewing Contractor Complaints**

The ombudsman has the authority to review Contractor complaints that they have not been afforded fair opportunity to be considered for award of a particular task order or delivery order under a multiple award contract.

### **2.7.2 Submitting Contractor Complaints to the Ombudsman**

A Contractor who receives an award under a multiple award contract may contact the ombudsman with a complaint concerning the award of a particular task order or delivery order placed under the multiple award contract.

### **2.7.3 Time Limit for Complaint Submission**

The Contractor is encouraged to try to resolve the issue with the CO prior to contacting the ombudsman. However, Contractor complaints to the ombudsman must be made within five (5) workdays of the award under complaint.

### **2.7.4 Limit of Ombudsman Authority**

The ombudsman's authority is limited to issues pertaining to the awarding of task orders and delivery orders under multiple award contracts. Contractor complaints directed to the ombudsman shall be confined to these issues. All other complaints will be outside the authority of the ombudsman and will be returned to the Contractor without action.

### **2.7.5 Ombudsman Determination of Findings**

Upon review of the facts, the ombudsman will determine whether or not the Contractor was afforded a fair opportunity to be considered consistent with the procedures in the contract and either deny the Contractor's Complaint, or require that the CO take corrective action regarding the complaint.

### **2.7.6 Final Resolution of Complaints**

If the CO does not agree with the ombudsman's decision, the issue shall be referred to the MTMC Principal Assistant Responsible for Contracting for final decision.

### **2.7.7 Ombudsman Process Not Replacing Disputes Clause**

These ombudsman procedures are not subject to FAR 52.233-1, Disputes, with or without its Alternate I found elsewhere in this contract.

## **2.8 Management, Quality Control, Reporting and Records**

### **2.8.1 Management**

The MC shall establish and maintain a Management Plan to indicate how service will be managed, coordinated and maintained for all customers. The Management Plan shall include a Risk Management paragraph or chapter that

will detail all significant risks identified by the MC, the likely impact of such risks if not mitigated, and the approach the MC will take to minimize or mitigate all identified risks. The government recognizes that minimized time for pickup and delivery reduces risk to cargo and to meeting objectives, such as Required Delivery Dates. Therefore, the government places high value on minimizing this risk. This is especially true for pickup and delivery of refrigerated cargo throughout the Island of Puerto Rico. MCs may expect that contract awards and awards of delivery orders under Best Value consideration will evaluate this factor highly. The MC shall submit a proposed Management Plan as part of its technical proposal. This Plan should include as a minimum how the contractor intends to meet scheduled deliveries, to meet unique customer requirements and identification of risks and how the MC will minimize risks for pickup and deliveries.

### **2.8.2 Quality Control**

The MC shall establish and maintain a Quality Control Plan (QCP) to ensure quality service is provided throughout the terms of the contract. The MC shall submit a proposed QCP as part of its technical proposal. The QCP should include as a minimum how the MC intends to meet the performance objectives, and should also identify those areas the MC sees as critical to the customers for this contract, how it will monitor quality performance in those areas, and how it will maintain or exceed customer expectations, including identification and correction of problems.

### **2.8.3 Problem/Failure**

The MC shall self-identify any problem or failure that may impact contract performance. In accordance with its QCP, the MC shall provide the COR with a succinct written plan of action within ten (10) business days of MC self-identification or awareness of a potential or real problem, failure or deficiency. The MC shall detail the methodology for correcting the problem or deficiency in the plan of action, and provide an assurance of the specific time required to bring performance back to acceptable quality levels, as applicable.

## **2.9 Customer Service Assistance**

The MC must establish/designate a Customer Service activity to be responsive to Government activities that require assistance. Government activities must be able to contact a person representing the MC throughout the business day to obtain expert assistance in answering questions, exchanging information and resolving problems. A single focal point for each Government activity is desirable. The MC will provide specific points of contact for each Government shipper no later than seven (7) days after contract award.

### **2.9.1 Performance Requirement Summary (PRS)**

The Government will monitor the MC's performance through the Government Performance Requirements Summary (PRS), see below Table, to be used in this program, and is provided for the Convenience of the MC. Other Performance Objectives not addressed in the PRS will be monitored by exception. This PRS is to be used for administrative purposes only and does not reflect a change in the contract requirements. To the extent any conflict may arise between the use of the PRS and the substantive provisions of this contract, the substantive provisions of this contract shall apply.

<b>Performance Objective/Description</b>	<b>Measures</b>	<b>Performance Standard (AQL)</b>	<b>Surveillance Method</b>	<b>Government Actions</b>
01 Container Pickup and Delivery	Pickup and deliver cargo within 8 working hours of AOM notice	98%	Ocean MC and motor MC weekly reports; Daily Consignee reports	Evaluate contractor's performance quarterly
02 Empty Container Pick Up and Delivery	Pickup and deliver cargo within 8 working	98%	Ocean MC and motor MC weekly reports;	Evaluate contractor's performance

	hours of notice		Daily Consignee reports	quarterly
03 Container Pickup and Spotting -Export	Pickup and spotting of containers within 8 working hours of notice	98%	Motor MC weekly reports; Daily Consignor reports	Evaluate contractor's performance quarterly
04 Stuffed Container Pickup and Delivery	Pickup and Delivery of stuffed containers within 8 working hours of notice	98%	Motor MC weekly reports; Daily Consignor reports	Evaluate contractor's performance quarterly
05 Pickup of containers of multiple consignee shipments and delivery of onward shipments	Pickup and delivery of onward shipments within 2 work-days	98%	Motor MC weekly reports; Daily Consignee reports	Evaluate contractor's performance quarterly
06 Pickup of Refrigerated Containers with proper Temperature/fuel	Pickup of refrigerated containers with appropriate temperature and fuel	100%	Motor MC weekly reports; Daily Consignee reports	Evaluate Contractor's performance quarterly
07 Documentation and Reports	Submit weekly reports as required	100%	Weekly submission of reports	Evaluate Contractor's performance quarterly

## Performance Requirement Summary (PRS) Table: Critical Performance Objectives

### 2.9.2 Performance Measurement Approaches

The CO and the COR will monitor MC performance and compliance with the terms and the conditions of the contract using the PRS and such other standard techniques as inspections, Government generated management reports, MC reports and customer feedback. The COR, in conjunction with the CO, will conduct periodic meetings (apart from the Quality Council) with the MC to discuss operations, and problem areas.

### 2.9.3 Use of Quality Performance Information

Performance data and contract compliance will be provided to OOs as part of information used in determining best value Contractors. Information from the reports will be compiled cumulatively to provide annual reports of past performance for use in past performance evaluations for future awards.

### 2.10 Quality Council

(a) Council Meetings will be held in order to identify and resolve potential operational problems and to achieve continuous process improvement. The Government shall establish a Quality Council consisting of members which may include representatives of the Carrier, Ocean Cargo Booking Office (OCBO), Ocean Cargo Clearance

Authority (OCCA), Shipper services, as well as the Contract Administrator(s), Technical Representatives, Shipper Representatives, and the CO.

(b) The Quality Council shall meet on a semi-annual basis, or as needed, to identify, monitor, and recommend solutions to operational problems arising during the term of the contract. Recommendations for process improvement will be elevated to the Procuring Contracting Officer or his/her designated representative and the designated MC representatives for consideration, approval and negotiation of contract modifications as applicable.

## **2.11 Performance Requirements**

Performance Requirements in this document are expressed in the following manner and may contain the following three elements. In each case, when taken together, these elements constitute a performance requirement.

### **2.11.1 Performance Objective**

A statement of the outcome or results expected of the MC (not output).

### **2.11.2 Performance Measures**

The critical few characteristics or aspects of achieving the objective that will be monitored by the Government, are those things that the Government will analyze. Each objective may have one or more measures.

### **2.11.3 Performance Standards**

(a) The targeted level or range of levels of performance for each performance measure also referred to as Acceptable Quality Level (AQL).

(b) Not every performance objective in this contract has a related performance measure or performance standard. However, every performance objective is a contractual requirement. For those performance objectives that do not specify a measure or standard, the measures and standards are IAW standard commercial practices, i.e., substantial compliance with local customary trade practice. When not stated, Performance Standards are assumed to be one hundred (100) percent, unless standard commercial practices would apply a lower standard.

(c) Performance measures/standards, where specified, may be used to achieve a variety of goals, including collection of data to test the practicality of a performance standard; identification of a performance standard of less than one hundred (100) percent compliance; emphasis on most critical performance objectives; collection of data to support quality assurance and contractual remedies (including evaluation of past performance, discussion at Quality Council meetings, etc.) and similar goals.

## **3.0 Performance Work Statement (PWS) – Description of Services**

### **3.1 Basic Contractor Requirements**

#### **3.1.1 General Transportation Services**

The MC shall provide motor carrier freight transportation services within Puerto Rico, and that it possesses or will possess by the effective date of the contract date the requisite operating authority required by all federal, state, Commonwealth and other local government agencies to perform such services. The MC shall transport by motor vehicle over public highways in Puerto Rico all types and classes of cargo, which may be required to be transported under this contract. This includes Breakbulk and containerized General Cargo, and refrigerated containerized cargo. Hazardous materials, explosives, oversize and overweight cargo is considered general cargo categories.

#### **3.1.2 Delivery of Inland Cargo**

The MC agrees to provide inland transportation of DoD cargo tendered for transportation under this contract, whatever its size and weight that can be legally transported, with certainty, celerity between the port of San Juan and zone points of origin and zone points of destination in Puerto Rico as described herein, and as set forth in the Schedule of Rates. The MC agrees to provide all personnel, equipment, tools, materials, supervision and other items as are necessary to provide such services in accordance with the terms and conditions of this contract, and to maintain such services throughout the period of the contract and for any extensions or option periods exercised hereunder.

### **3.1.3 Compliance with Rules**

The MC agrees to comply with all rules and regulations of any governmental agency as may be applicable for the filing of its rates for such service to the Government in the carriage of military cargo as set forth herein. The MC further agrees that the rates offered will not be equal to or exceed the rates set by the Public Service Commission (PSC) of the Commonwealth of Puerto Rico. Rates equal to or exceeding the PSC will not be accepted and may result in the offer being deemed as non-responsive to this solicitation.

### **3.1.4 Equipment Interchange Agreements**

The MC agrees that it has entered into or will enter into a valid standard Equipment Interchange Agreement (EIA) with each vessel operating ocean MC which holds a contract for the carriage of DoD cargo to and from the Commonwealth of Puerto Rico by the effective date specified of this contract, and will maintain such EIAs during the contract period and any extensions or options exercised hereunder. If the terms and conditions of this contract are different than those contained in the MC's standardized equipment interchange agreement, the terms and conditions of this contract will apply.

### **3.1.5 Vehicle Requirements**

The MC agrees to provide equipment necessary to move cargo as specified in this contract. Vehicles shall meet all applicable safety and regulatory requirements.

### **3.1.6 Registration of Vehicles**

All MC motor vehicles operated under this contract shall be registered at all Department of Defense installations operating within the Commonwealth of Puerto Rico. It shall be the MC's responsibility to obtain such registration directly from the applicable installations.

### **3.1.7 Vehicle Specifications**

The MC shall provide vehicles and equipment that can safely move cargo as specified in this contract. Such vehicles and equipment may include, but not be limited to, tractors, containers, small vans, dry trailers, chassis, flatbeds, and lowboys as described in the definitions section of this contract.

### **3.1.8 Personnel Requirements**

The MC agrees to comply with the following requirements for personnel used in the performance of transportation services under this contract.

### **3.1.9 Contract Manager**

The MC shall provide a contract manager who shall be responsible for the performance of work and services during the period of this contract. The name, address, telephone number, e-mail address during working hours, facsimile transmission number and the emergency telephone number for use of that person and an alternate who may act in the contract manager's absence shall be designated in writing to the Contracting Officer or his/her designee. The contract manager or alternate shall have the full authority to act for the MC on all contract matters relating to the

daily operation of services under this contract. The contract manager or alternate shall be available during normal working hours to, among other things, receive notice for pickup and delivery of cargo, or discuss operational problems, and they shall be available 24 hours a day to deal with emergencies. The contract manager or his/her alternate shall from time to time, be required to attend meetings regarding operation and administration of the contract with the COR. The contract manager and his/her alternate must also be able to read, write, speak and understand English.

### **3.1.10 Knowledge of Local Emergency Laws and Regulations**

The MC's contract manager and alternate shall be responsible for knowledge of procedures and compliance with the Puerto Rico Hurricane Standard Operating Procedure for Natural Disasters or Emergencies. A copy of the standard operating procedures is included at Attachment 4.

### **3.1.11 Driver Qualifications**

All drivers of motor vehicles transporting DoD cargo under this contract shall be qualified to drive a motor vehicle and shall possess and maintain current, valid commercial motor vehicle operator permits issued by the Commonwealth of Puerto Rico. Drivers shall comply with any changes to access and security regulations issued by the U.S. Government. The contractor shall also provide police records if the Government and military base security so request. Drivers shall follow all applicable rules and regulations while DoD cargo is in their possession in a professional manner. The Government reserves the right to refuse to permit any MC's driver from transporting DoD cargo under this contract which fails to maintain a Certificate of Good Conduct or valid operators permit, or is not physically qualified to drive a motor vehicle.

### **3.1.12 Transport of Hazardous Cargo**

Only drivers that are HAZMAT trained and certified in the requirements for the handling and transportation of hazardous materials under 49 CFR parts 838, parts 177.800 and 390 through 397, may transport such cargo under this contract. Pickup and delivery of containers loaded with hazardous materials will be accomplished by the MC within one working day after notification of an order for services to provide movement of a loaded hazmat container, beginning at 0730 hours on the day after such notification has been received.

## **3.2 General Basic Common Service Requirements**

### **3.2.1 Basic Service**

(a) The MC's basic service shall consist of furnishing to the Government compliant tractors in a timely manner; moving the stuffed container on ocean-MC-provided chassis/trailers from the Port of San Juan to the designated point within the delivery requirements of this contract handling multiple stop-off points if desired; providing facilities to handle less than container load (LCL) shipments; and picking up containers/trailers from the consignee and transporting the containers/trailers back to the Port of San Juan within the delivery requirements of this contract.

(b) Line-haul transportation of containerized DoD cargo in full container loads between the Port of San Juan and points in Puerto Rico shall be performed on a "drop and pick" round-trip basis, unless specifically ordered otherwise.

### **3.2.2 Pick-up of containers at Port of San Juan**

(a) The OC will notify the MC via email to pickup cargo documents for delivery or redelivery of containers. The MC shall initiate onward movement of cargo within 8 hours of notification. The MC may assign an individual to contact the OC daily to determine the extent of cargo that is in Available for Onward Movement (AOM) status. Notification of cargo AOM, after 12:00 noon, shall be delivered the next working day. For Zones 1

and the delivery of reefer cargo, notification after 12:00 noon for AOM may be delivered with the same day upon concurrence of all parties.

(b) Upon arrival of full and partial containers at the Port of San Juan, as designated by the OC, the MC shall pick up the cleared container at the Port of San Juan and deliver to the consignee as ordered by the OC. The MC shall expedite the pick-up and delivery of refrigerated containers and other containers as requested by the OC and/or the COR. When picking up the container at the Port, the MC shall ensure that the chassis used is completely compliant with all safety standards.

(c) At the time of pick-up, the MC shall not accept for transport or transport any loaded container on which the seal is broken or missing or on which it appears that rivets on the container door handle have been tampered with. The MC shall immediately notify the OC and the COR of the broken or missing seal or tampered door handle and request instructions for disposition. In addition, if a seal on any container has been broken and/or replaced while the container is in the MC's custody, the MC shall notify the OC and the COR with a complete report as to the circumstances and potential reasons for the problem.

### **3.2.3 Cargo Delivery**

(a) Pickup and delivery shall be accomplished not later than (8) working hours with final delivery before close of business for receipt of cargo at the receiving OC's port terminal. Additionally appointments for pickup/delivery with a specific time may be made between the Contractor and the receiving activity outside the 8 working hours time limit. If the Contractor fails to deliver the cargo in accordance with these standards or at the specified time of the appointment, liquidated damages may be assessed.

(b) Notwithstanding the provisions this Section, MC will not retain loaded containers overnight with the exception of the handling multiple consignee shipments. In the event that it is anticipated that overnight retention of a loaded container or containers is necessary, the Contractor shall contact the OC and/or COR for disposition instructions regarding such overnight retention.

### **3.2.4 Wait Time**

(a) The MC shall pick-up or deliver cargo in accordance with an order for services within the normal working hours of the facility as specified in Attachment 6. In the event that consignee/shipping activity refuses to or is unable to accept delivery or make the empty/loaded container or cargo available for pickup causing the MC to incur driver waiting time beyond two hours free time, the government shall be liable for the payment of waiting time charges at the rate of \$35.00 for each hour that the driver is so delayed. The MC shall obtain a written record from the government representative of the arrival time and the time when services were completed.

(b) In the event that the MC arrives at the OC's terminal/port to pickup a loaded container or break bulk cargo, or arrives at the OC's terminal/port to deliver a loaded or empty container or break bulk cargo within the normal working hours as specified by the Ordering Officer and is unable to pick up or deliver due to the fault of the OC, and the MC waiting time exceeds (1) one hour of free time, the government shall be liable for the payment of waiting time charges at the rate of \$35.00 for each hour that the driver is so delayed which will be assessed against the OC.

### **3.2.5 Driver free time**

Driver free time shall commence to run upon arrival of the MC at the designated location, if not earlier than the appointed arrival time. Time shall cease to run when delivery or pickup of cargo or equipment is completed. Driver free time shall not run during any official lunch period of the designated facility.

### **3.2.6 Notification of Delay**



The MC shall immediately notify the OC, consignee and the COR of any delays in the pickup or delivery of cargo, and shall note such delay and applicable times with written confirmation to the consignee/shipper on the order documentation.

### **Performance Objective 01**

**Container Pickup and Deliver.** The MC shall pick up and deliver containers from the OC's facility on Port within eight (8) working hours of receiving the notice that cargo is AOM from the OC.

#### **3.2.7 Delivery Requirements**

The MC shall place the chassis holding the loaded container at the location designated by the consignee/OC. The MC shall obtain a signed receipt from the consignee/OC for delivery.

#### **3.2.8 Pick-up of Empty Containers**

Upon subsequent notification by the OC, COR or the consignee, the MC shall pick-up the empty container at the destination point and return the container without delay to the ocean MC to which the equipment belongs at such OC's designated port terminal. In the event that the chassis is Government provided, the MC is responsible to return the empty chassis to the origin point after the container has been offloaded at the OC's port terminal. The MC shall obtain a signed receipt from the consignee/OC for pickup. Subsequent use of the container by the MC is not permitted.

### **Performance Objective 02**

**Empty Container Pickup and Return.** -The MC shall pick-up empty containers from the consignee's facility and return to the OC's terminal within eight (8) working hours of notification.

#### **3.3 Export Cargo**

##### **3.3.1 Pick-up of Container on Chassis at Port**

Upon notification of an order for services from the consignor, the MC shall obtain the applicable booking or order for services number, and provide a tractor with driver at the OC's port terminal for the pick up of an empty ocean-MC provided container on chassis.

##### **3.3.2 Spotting of Container**

Upon receipt of notice from the consignor, the MC shall spot the container on chassis at the designated location. The notice will include the type, size and capacity of container ordered by the Government, the name and address of the shipper, and the date for spotting the container. If the MC fails to spot containers and pick up and deliver the cargo in accordance with these standards, it shall be liable for the payment of liquidated damages or other costs as defined in Section 3.4.2. The MC shall obtain a signed receipt from the consignor for delivery.

##### **3.3.3 Pick-up and delivery of Spotted Container**

Upon subsequent notification by the OC, the MC shall obtain an Export Traffic Release (ETR) from the OC, pick up the loaded container at the origin point and deliver the container to the designated OC's port terminal for onward ocean movement. The MC shall obtain a signed receipt from the consignee for pickup.

### **Performance Objective 03**

**Container Pickup and Spotting.** The MC shall pick-up and spot empty containers within eight (8) working hours of notification.

**Performance Objective 04**

**Stuffed Container Pickup and Delivery.** The MC shall pickup and deliver stuffed containers within eight (8) working hours of notification.

**3.4 Less than Container Load Shipments (LCL)/Less than Trailer Load (LTL)/Mixed Consignee Containers****3.4.1 Multiple Consignee Shipments****3.4.2 Pickup of Shipment**

Upon notification of an order for services, the MC shall obtain an OBL from the OC, and pickup a container consisting of multiple consignee cargo from the ocean MC's port terminal for transport.

**3.4.3 Delivery to Contractor's Facility**

MC shall deliver cargo to their facility for unstuffing. Upon delivery of the cargo at the MC's facility, the MC shall note any overage, loss, or damage to the cargo as manifested on the packing list and notify the COR of any exceptions.

**3.4.4 Delivery to Ultimate Consignee**

MC shall segregate and deliver cargo to the ultimate consignee as indicated on packing list or markings. The MC shall notify the COR if the delivery instructions are incomplete or in conflict with the documentation. The MC shall obtain a signed receipt from the consignee for delivery.

**Performance Objective 05**

**Pickup of containers of multiple consignee shipments and delivery of onward shipments.** The MC shall deliver onward shipments within 2 work-days from the time that containers of multiple consignee cargo were picked up at the OC's port terminal.

**3.5 Accessorial Services****3.5.1 Overweight/Oversize Cargo Service.**

The MC shall provide special equipment for inland transportation for cargo that is overweight or oversized as defined herein. The MC shall be paid for such service as set forth in the Schedule and as established in Attachment 1, Application of Rates. It shall be the MC's responsibility, at Government expense, on a direct cost reimbursement basis, to obtain all permits required to move oversize or overweight cargo. The MC shall obtain the necessary permits before the transportation is performed.

**3.5.2 Re-spot Service.**

Upon request or order of the OC or the consignee, the MC shall provide Re-spot service which shall consist of moving a Government container from the initial point of delivery within a facility to another point within the facility for stuffing or stripping. The MC shall be compensated for Re-spot service in accordance with Attachment 1, Application of Rates.

**3.5.3 Stop-Off Service.**

The motor MC shall provide stop-off service as requested by the COR or consignee. Stop-off service does not include Re-spot service within the continuous property of the activity involved. The MC shall be compensated for stop off service in accordance with applicable rates. When the total distance traveled between the container's first destination and the container's second destination exceeds 50 miles, an additional stop off charge will be paid in accordance with Attachment 1, Application of Rates, for each fifty mile increment of distance traveled between the first and second destination. When one or more stop offs occur, the MC shall be entitled to the freight based on the rate between either the first destination or the second destination and the Port of San Juan, whichever is greater. In the event that cargo is added to an order or in the event that the contractor is ordered to move from zone to zone rather than port to zone, the contractor shall be entitled to an additional payment of \$100.

#### **3.5.4 Diversion.**

Upon request of the OC, COR or consignee, the MC shall divert a container and change the destination of a loaded or empty container after transit has commenced. Stop-off and re-spot shall not be considered a diversion regardless of when they occur. The MC shall be compensated for diversions in accordance with Attachment 1, Application of Rates.

#### **3.5.5 Chassis Requirement.**

From time to time, the Government may require the MC to provide a chassis with its tractor for the movement of Government furnished containers. When providing this service, the MC shall provide chassis' that will remain with the container while they are in the custody of the Government unless this requirement is waived by the OC, COR, or consignee. Chassis' provided by the MC shall be compatible for transporting the size and type of Government furnished containers. The MC shall be compensated for Government use of a MC chassis in accordance with Attachment 1, Application of Rates.

#### **3.5.6 Refrigerated Containers**

##### **3.5.7 Validation on the Maintenance of Temperature**

When the OC offers a fully loaded refrigerated or controlled atmosphere container of perishable subsistence to the MC for movement, the MC shall be responsible to check the refrigerated/controlled atmosphere container equipment to ensure that there is sufficient power to maintain the required temperature during the free time. The MC shall check to determine whether such containers are maintained at an internal temperature within five degrees Fahrenheit of the specified in-transit temperature from the time it is received until delivery at destination plus any portion of the un-expired free time. The MC shall notify the OC, COR, and the consignee if the temperature is below requirement. The MC shall not move the containers/trailers unless there is sufficient power to meet the maintenance requirements. The COR or the consignee may waive this requirement on a case-by-case basis. The MC shall document any exceptions granted.

#### **Performance Objective 06**

**Pickup of Refrigerated Containers/ with proper Temperature/fuel. The MC shall not pick up any refrigerated containers that do not have enough power to maintain the temperature for the free time, unless granted an exception by the COR or the consignee.**

#### **3.6 Reports and Documentation**

##### **3.6.1 Weekly Reports**

(a) Weekly reports are due each Monday (1530 hours local time) or the next working day, if Monday is a holiday, the MC shall, by mutually agreeable means, provide the COR with an electronic report containing the following information in connection with cargo picked up, transported and delivered in Puerto Rico for the previous work week:

(b) Containers/Break-Bulk Originating at the Ocean Terminal: For each container, date and time of notification by OC of order for services for container pick-up at ocean MC's terminal; name of ocean MC, date and time the MC received the container at the port terminal, OC's or Government container number with ALPHA prefix, seal and/or keyless lock number, and date and time of delivery of container to consignee. This report shall also include copies of applicable signed work orders and TIR/EIR for each container, with a notation of any problems incurred in connection with any specific shipment or container and the number of futile trips.

(c) Containers/Break-Bulk Originating at Points Other than Ocean Terminal: For each container, date and time of notification by OC of order for services for container pick up at shipping activity; name of shipping activity, date and time the MC received the container at the origin point, OC's or Government container number with ALPHA prefix, seal and/or keyless lock number, and date and time of delivery of container to OC. This report shall also include copies of applicable signed work orders/ETRs and TIR/EIRs for each container. This report shall also include copies of applicable signed work orders and TIR/EIR for each container, with a notation of any problems incurred in connection with any specific shipment or container and the number of futile trips.

### **Performance Objective 07**

**Documentation and Reports. The MC shall provide weekly reports as required in Paragraphs 3.6.1 (b) and (c).**

#### **3.7 Breakdown Notification**

In the case of a breakdown en-route between points under this contract, the MC shall immediately notify the OC, COR and consignee of such breakdown. The MC shall be solely responsible for securing tires, tire repair, or other ordinary repairs to all equipment. If necessary, the MC, at its own expense shall furnish a substitute compatible motor vehicle within two hours unless directed otherwise by the OC. The MC will not be paid for down time or out of service time due to equipment failure.

#### **3.8 Trans-loading**

With the exception of multiple consignee shipments, the MC shall not trans-load or transfer any DoD cargo from one conveyance to another without the permission of the COR. Any transfer or trans-load of cargo shall be at the MC's risk and expense.

#### **4.0 Special Contract Requirements**

##### **4.1 Security**

If the Government notifies the MC that the employment or the continued employment of any driver is prejudicial to the interests or endangers the security of the United States of America, the MC shall make any changes necessary in the appointment(s). The Government shall reimburse any costs to the MC occasioned by such changes.

##### **4.2 Strikes**

In the event that delivery of cargo is delayed by reason of strike or stoppage of work, the MC shall immediately notify the OO for disposition instructions. The MC shall not be liable for liquidated damages or detention charges as set forth in the contract for delays caused by strikes or stoppage of work beyond the control of the MC. However, in no case shall the MC be relieved of its obligation to fulfill the order for services as result of the strike or stoppage of work.

##### **4.3 Liens**

###### **4.3.1 Seizure of cargo**

The MC agrees that it will not assert any type of lien, on any cargo transported by the Government under this contract. The MC further agrees that it will not take any action to seize, arrest, hold, or otherwise detain such cargo through any judicial process in the U.S or the Commonwealth of Puerto Rico. The MC agrees to insert this clause in all subcontracts at any tier and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

#### **4.3.2 Freight**

There shall be no liens, asserted or permitted on any freight payable by the Government under this contract. The MC agrees to insert this clause in all subcontracts at any tier and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

#### **4.4 Detention of Contractor Equipment**

**4.4.1 Free Time** The total amount of free time for Government use of the MC's conveyances when requested by the COR or Government's designated agent to transport DoD cargo under this contract will be 3 (three) working days. Time shall commence to run at 0800 hours local time on the next working day after the conveyance has been disconnected from the tractor at a Government facility, and shall cease to run when the MC is notified that the conveyance is available for pick-up. When the Government holds the conveyance longer than the allowed free time, detention shall accrue. Detention charges as set forth below shall be paid for each 24 hour period of time spent, or pro-rata for part thereof, beyond the total allowed free time.

#### **4.4.2 Detention Charges**

<u>TYPE OF EQUIPMENT</u>	<u>PER DAY</u>
DRY TRAILER	\$20.00
LOWBOY	\$75.00
FLATBED	\$25.00
CAR MC	\$75.00
CHASSIS	\$5.00

#### **4.4.3 Detention Invoices**

Detention invoices must be submitted with the proper documentation showing evidence that detention occurred. Invoices are to be submitted no later than (6) six months from the date the conveyance is returned to the MC. Detention invoices received after that time will not be certified for payment and the MC waives any right to payment thereafter.

#### **4.4.4 Ocean Carrier Equipment**

In the event that the Government incurs detention charges under its contract with an OC for the ocean transportation of cargo to and from Puerto Rico as a result of non-performance or breach of the required delivery time by the MC under this contract, the MC shall be liable to the Government for the actual detention charges assessed by the OC which are directly attributable to the MC. The Government shall have the right to offset these detention monies owed by the MC to the Government against freight monies owed to the MC by the Government under this contract of services or any other Government contract.

#### **4.5 Equipment Loss or Damage**

##### **4.5.1 Damage to MC Equipment**

Should the tractor, trailer or any other conveyance belonging to the MC be damaged by act of the Government, its agents, employees, or contractors while such MC equipment is in the custody of the Government, its agents, employees or contractors, the Government shall repair or reimburse the MC the lessor of the following: the reasonable costs of repairs; the fair market value immediately prior to the damage. The MC will assign to the Government any rights, causes of action, or other claims, which the MC may have against third parties with respect to such damage. The Government shall not be liable for the repair of any damage under this Section unless written notice specifying such damage shall have been given to and acknowledged by the Government or its authorized representative at the time custody of the container or other equipment is returned to the MC. Claims submitted under this clause for damage to MC equipment shall be filed with Commander, Military Traffic Management Command, Office of MTAQ-G, 200 Stovall Street, Alexandria, VA 22332.

#### **4.5.2 Damage to Government Equipment**

The MC shall be liable for loss of or damage to Government containers and chassis while in the MC's custody to the same extent that the Government is liable for loss or damage to the MC equipment while in the Government's custody. The MC will not procure insurance coverage on Government containers or chassis.

#### **4.5.3 Damage to Ocean Carrier Equipment**

The MC shall be liable for loss of or damage to an OC's containers and chassis while in the MC's custody for the transportation of DoD cargo under this contract to the extent set forth in its Interchange Agreement with the applicable OC. The Government shall not be liable for any loss or damage to OC's containers and chassis while in the MC's custody.

#### **4.6 Insurance Requirements**

The MC shall assume responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the MC's motor vehicles or other equipment by, or the action of, the MC or the MC's employees and agents. Therefore, the MC shall obtain and maintain, at its own expense, adequate public liability insurance as set forth below.

##### **4.6.1 General Public Liability**

(a) Before commencing work, and during the period of the contract and any extensions or option periods exercised thereunder, the MC shall, at its own expense, provide and maintain policies of general public liability insurance with applicable endorsements sufficient to satisfy the liability amounts as follows: for (1) bodily injury not less than \$500,000 for each person and \$500,000 for each occurrence; and (2) for property damage (including environmental restoration) not less than \$500,000 for each accident and \$1,500,000.00 in the aggregate. Public liability insurance is defined above to include coverage for bodily injury, property damage, and environmental restoration. The policy shall also name the United States Government as an additional assured with a waiver of subrogation noted on the policy.

(b) All insurance shall be written on companies (insurance underwriter) which must have a policyholder's rating in the Best's Insurance Guide listed in the Fiscal Service Treasury Department No. 570, listing of surety companies or a company authorized to issue such insurance by the Commonwealth of Puerto Rico, as applicable. The insurance policy shall remain in effect continuously, without interruption for the full period of the contract, and the policy shall contain an endorsement that any cancellation or material change adversely affecting the Government's interest shall not be effective unless the insurer or the Contractor gives 30 days prior written notice of such cancellation or change to the Contracting Officer.

(c) In the event a policy expires during the contract period, a complete duplicate certified copy of any renewal policy shall be submitted to the Contracting Officer not later than 15 days prior to the expiration of any current policy on file. Failure to obtain and/or maintain the requisite insurance coverage shall be grounds for finding a Contractor non-responsible prior to award and grounds for termination for default after award of a MC's contract.

(d) Notwithstanding the provisions set forth above, the MC shall maintain, under the same or separate policies, sufficient insurance coverage required for Equipment Interchange Agreements with OC's providing deep-sea ocean transportation services for DoD cargo to and from Puerto Rico. The Government shall in no event be liable or responsible for damage to or injury to any person or property occasioned through the use, maintenance, and operation of the MC's motor vehicles or other equipment by, or the action of, the MC or the MC's employees and agents, and the government shall be indemnified and held harmless against claims for damage or injury in such cases.

#### **4.6.2 Cargo Liability**

The MC shall be liable for the security, loss of or damage to cargo under this contract from the time it is receipted for by the MC at pickup or loading at origin until it is delivered to destination and receipted for by the consignee. The MC shall obtain cargo loss and damage insurance in accordance with FAR 52.228-9, as set forth in this contract. In addition to the requirements of the clause at FAR 52.228-9, the policy shall also name the United States Government as an additional assured with a waiver of subrogation noted on the policy.

#### **4.7 Performance Bond**

(a) Before commencing work, and during the period of the contract and any extensions or option periods exercised thereunder, the MC, at its own expense, shall obtain and furnish a performance bond in the amount of \$100,000.00. The bond shall be furnished on MT Form 380, "Performance Bond", and must be issued by a surety company listed in the Fiscal Service Treasury Department, Circular No. 570 or a company authorized to issue such performance bonds by the Commonwealth of Puerto Rico, as applicable. The performance bond shall remain in effect continuously, without interruption for the full period of the contract, and the bond shall contain an endorsement that any cancellation or material change adversely affecting the Government's interest shall not be effective unless the surety or the Contractor gives 30 days prior written notice of such cancellation or change to the Contracting Officer. The Government shall be the sole beneficiary of this bond.

(b) The performance bond secures performance and fulfillment of the MC's obligation to deliver DoD freight to destination and other services rendered hereunder. The bond will cover, among other things, DoD re-procurement costs as a result of MC default, abandoned shipments, or bankruptcy when such re-procurement costs can not be obtained through Government offset against monies owed to the MC under this contract or any other Government contract.

(end of special terms and performance work statement)

#### **5.0 Clauses**

##### **CLAUSES INCORPORATED BY REFERENCE**

52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.217-2	Cancellation Under Multiyear Contracts	OCT 1997
52.245-1	Property Records	APR 1984
52.246-4	Inspection Of Services--Fixed Price	AUG 1996
252.203-7002	Display Of DOD Hotline Poster	DEC 1991
252.204-7000	Disclosure Of Information	DEC 1991
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004	Required Central Contractor Registration	NOV 2001
252.223-7002	Safety Precautions For Ammunition And Explosives	MAY 1994
252.223-7006	Prohibition On Storage And Disposal Of Toxic And Hazardous Materials	APR 1993

252.243-7001

Pricing Of Contract Modifications

DEC 1991

## CLAUSES INCORPORATED BY FULL TEXT

## 52.212-1 INSTRUCTIONS TO OFFERORS--COMMERCIAL ITEMS (JUL 2003)

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show--

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3;

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.



(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers:

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for

quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation. (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407 ((202) 619-8925).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094 (telephone (215) 697-2569).

(i) Availability of requirements documents cited in the solicitation. (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--GSA Federal Supply Service Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619-8925, Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the--Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained--

(A) By telephone at (215) 697-2667/2179; or

(B) Through the DoDSSP Internet site at <http://dodssp.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) Data Universal Numbering System (DUNS) Number. (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@mail.dnb.com](mailto:globalinfo@mail.dnb.com).

#### **FAR 52.212-1 Addendum**

Instruction to Offerors—Commercial Items (OCT 2000) Paragraph (a) is amended as follows: The NAICS code is 484110. Block 10 of the SF 1449 contains the SIC of 4200.

Submission of Offers, Paragraph (b) is hereby amended as follows:

Special Notes to Offerors:

- A. Hard copy and electronic submissions are required in response to this solicitation.
- B. Proposals submitted by offerors will not obligate the Government to determine a competitive range, conduct discussions, or solicit or entertain revised or Final Proposal Revisions (FPRs).
- C. The Government reserves the right to incorporate all, part or none of the offeror's written proposal into the resultant contract.
- D. A Pre-proposal Conference will be held; 20 November 2003, in San Juan, Puerto Rico, the time will be provided at a later date. Fax written questions or items for discussion may be directed to the attention of Ms. Robin Thomas and Mr. William Mills at (703) 428-3325 or email to: [thomasrobin@mtmc.army.mil](mailto:thomasrobin@mtmc.army.mil) and [millsw@mtmc.army.mil](mailto:millsw@mtmc.army.mil), by 1300 (1:00 pm) on 14 November 2003.

**I. SUBMISSION OF OFFERS**

- A. In response to this request for proposals (RFP), an offeror must mail or hand-deliver a written proposal in accordance with Part III of this section, titled Written Proposals, including all representations and certifications to the address listed in paragraph D1 of this section.
- B. The offeror must also submit proposed rate offers on a computer disk in the Excel program format as provided. It is anticipated that the period of performance for this contract will be a one-year base period with two (2) one year option periods.
- C. The written and proposal and disk must be submitted to the addresses listed below and must **arrive prior to 4:30 P.M. Eastern Standard Time 19 December 2003 and remain firm for 120 days**. The offer must be enclosed in a sealed envelope marked Request for Proposal W8GYE-04-R-0020. The offeror's name and address should appear in the upper left-hand corner, and the envelope should be enclosed in a second envelope that must be sent to the address listed in below.

1. The written proposal must be sent to the Contracting Officer at the following address:

Military Traffic Management Command  
Attention: MTAQ-G (Mr. William Mills)  
Hoffman Building II, 200 Stovall Street, Room 12S67-64  
Alexandria, VA 22332-5000  
FOR DELIVERY ONLY TO ACQUISITION DIVISION

2. Any and all questions are to be directed to:

Ms. Robin Thomas  
Telephone number (703) 428-2061  
FAX number: (703) 428-3325  
E-mail address: [thomasrobin@mtmc.army.mil](mailto:thomasrobin@mtmc.army.mil)

- D. If negotiations are conducted and Final Proposal Revisions (FPRs) are requested each offeror will be notified by e-mail, fax or telephone of the date and time. Each offeror must submit FPRs to the electronic and written proposal to the addresses listed above in paragraphs 1 and 2.

- E. Company facsimile number and email/internet address must be provided with all offers.

- F. Submission of Rates. All rates offered must be submitted in accordance with the instructions specified in Section 2 below.

## II. WRITTEN PROPOSALS

Data required by paragraph 1 of this addendum, all offerors must submit written proposal material as described below in the quantities stated:

**VOLUME I** - Executed RFP Documents (Submit Original Documents)

**VOLUME II** - Technical Capability Narratives (Submit 4 Copies)

TAB I – Description of service capability to include on-time service, equipment, and management.

TAB 2 – Description of quality of past performance to include on-time service, equipment and management.

NOTE: Pricing information is not to be included in offeror's written technical submissions. Pricing information is to be provided through via the excel spreadsheet (see attachment 1). Instructions for submitting Volumes I – II are as follows:

### A. Executed RFP Documents (VOLUME I)

All offerors shall submit all documents requiring signature or completion by the offeror. Each offeror shall complete applicable fill-ins and signatures, and submit the original documents listed below. An authorized official of the firm shall sign the offer and all certifications requiring original signature.

1. Standard Form 1449, including acknowledgment of amendments, if applicable.
2. Clauses 52.212-3, Offeror Representations and Certifications – Commercial Items

### B. Narratives of Technical Capability (VOLUME II)

All offerors shall be required to submit written narratives describing their technical capability. Narratives must explain how their proposal will meet all requirements established in the solicitation. Each narrative at TAB 1 and TAB 2 will not exceed ten pages (for a total of 20 pages) in no smaller than 10-pitch font exclusive of graphs and charts. Proposals should address the following topics:

#### Service Capability

1. On-time service - Describe the frequency of service for picking up and delivering cargo to and from its origin and destinations. Describe how service for each zone will be maintained within consistent intervals to meet the performance standards prescribed by the contract.
2. Required Delivery Dates - Present an analysis to show the reliability of service in meeting scheduled arrival dates. Describe how you will meet Required Delivery Dates, ensuring cargo is picked up and carried to its destination in the quickest possible time, resolving documentation irregularities, maintaining good customer relations and advising of potential service disruptions will be accomplished.
3. Equipment- Describe the fleet capacity and suitability, and intermodal equipment inventory, quantity and age, and overall capability to maintain equipment and pickup and deliver cargo without loss/damage to meet contract delivery requirements.
4. Business Management – Describe the offeror's proposed Business Management, including understanding of a System's approach to the service offered, and especially a description of proposed Risk Management. The offeror should provide examples that demonstrate their ability to manage programs to identify and avoid problems in the first place, and to deal with problems encountered, for example: strikes, surges, equipment breakdown, accidents, weather contingencies. The offeror's proposed approach to customer (MTMC and Shippers)

relations/responsiveness, including the proposed Quality Assurance Plan. The offeror's proposed approach to communications, including an explanation of capability to satisfy any reporting requirements expressed in the solicitation.

### **Quality of Past Performance Information**

1. The MC shall provide a listing of not more than five current or recent clients (contracts within the last three years). The submittal must list the Company name, POC, phone number, and Contract Number (if applicable), emphasizing customers for whom it has made shipments into domestic in Puerto Rico. The Government may contact those firms and individuals named to verify information and gather additional information as it relate to on-time delivery, cargo loss and damage history and other performance criteria. Further, the Government may contact additional sources of information regarding the MC performance record or utilize its own performance database or both. Offerors are reminded that while the Government may elect to consider data not included in the proposal but obtained from other sources, the burden of providing thorough and complete performance information rests with the Offeror. Additionally, the Government may rely upon internal records of an offerors past performance as available.
2. The offeror should provide information describing the ability to meet performance requirements of previous contracts with the government or other commercial customers. Proposals should address the following:
  - (a) Quality of Service - As described in Service Capability above.
  - (b) Schedule - As described in Service Capability above.
  - (c) Business Relations - As described in Service Capability above.
  - (d) Management of Key Personnel

### **III. UNSOLICITED PROPOSALS**

Offers of service not solicited by this RFP will not be considered. In the event it is deemed necessary to solicit additional offers for service at a later date, solicitation may be limited to those MCs not originally considered

### **IV. REJECTION OF OFFERS**

The Government reserves the right to reject any or all offers in whole or in part.

(End of provision)

#### **52.212-2 EVALUATION--COMMERCIAL ITEMS (JAN 1999)**

The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

#### **Addendum to FAR 52.212-2 Evaluation - Commercial Items**

**I. GENERAL EVALUATION (Applicable to all offers including the General Section and Specialized Customer Requirements)**

A. Contract awards will be made in accordance with the terms of FAR 52.212-2, "Evaluation - Commercial Items" and the provisions contained herein. All rates will be examined for price reasonableness in accordance with FAR Part 15.

B. Proposals submitted in response to this Request for Proposal must demonstrate the offeror's technical capability to provide the services on all zone indices for which it offers rates.

C. The Government reserves the right to reject any offer of service on those zones (where applicable) where the Government determines that the technical capability to serve the zone index or indices as stated in the MC's offer is less than the MC's service offered commercially.

D. The Government reserves the right to reject any offer in whole or in part under this RFP that does not comply with the material requirements of this solicitation. Failure to comply with any of the material requirements of this solicitation, including submission of all applicable representations and certifications may be determined to be grounds for the Government to reject offers as technically unacceptable.

E. The Government may accept some or all rates or services initially offered, without discussion of those rates or services. If negotiations are conducted, they may be limited to certain rates or service specifically identified in writing by the contracting officer to the offerors. Thereafter, offers will be notified of the close of negotiations and the opportunity to submit a final proposal revision (FPR).

**II. TECHNICAL EVALUATION CRITERIA**

The following technical factors will be evaluated:

**(1) Service Capability**

- A. On-Time Service – See Addendum to FAR 52.212-1, Paragraph B.1.
- B. Required Delivery Date - See Addendum to FAR 52.212-1, Paragraph B.2.
- C. Equipment – See Addendum to FAR 52.212-1, Paragraph B.3.
- D. Business Management – See Addendum to FAR 52.212-1, Paragraph B.4.

**(2) Quality of Past Performance**

- A. Quality of Service
- B. Schedule
- C. Business Relations
- D. Key Personnel

**(3) Price**

All rates will be examined for price reasonableness in accordance with FAR Part 15. The Government will not award a contract to any offeror proposing any rate that is not fair and reasonable in accordance with FAR Part 15.402 and 15.404-1.

### **III. BEST VALUE EVALUATION FACTORS APPLICABLE TO THE GENERAL SECTION ROUTES AND CUSTOMER SERVICE SECTION REQUIREMENTS**

The following information is applicable to the solicitation sections evaluated using a best value analysis.

**1. Relative Order of Importance Terminology.** An evaluation of all offers will be made in accordance with the criteria set forth below. Evaluation criteria consists of factors and sub-factors. In order to provide the offeror with an understanding of the significance assigned by the Government, the criteria are assigned a relative order of importance. The following terminology is used:

- (a). Significantly more important. The criterion is substantially more important than another criterion. Criterion is given far more consideration than another criterion.
- (b). More important. The criterion is greater in value than another criterion, but not as much as a significantly more important criterion. Criterion is given more consideration than another criterion.
- (c). Equal in relative importance. The criterion is nearly the same in value as another criterion i.e., any difference is slight.

**2. The government will award a contract(s) resulting from the Best Value portion of this solicitation to the responsible offeror(s) whose offer(s), conforming to the solicitation, will be most advantageous to the government, price and other factors considered.**

3. Evaluation factors applicable to the general section zones and customer service section requirements. Awards will be made to the proposal(s) determined to be the most beneficial to the Government using a tradeoff (i.e. best value) process, with appropriate consideration given to the following evaluation factors and their sub-factors. For each non-price evaluation factor, further information on specific matters to be considered can be obtained by reference to corresponding paragraphs in the Instructions to Offerors.

(a) **Relative Order of Importance of Factors-** Of the three evaluation factors, Service Capability is more important than the Quality of Past Performance factor. Collectively, the non-price factors are more important than the Price factor.

(b) **Relative Order of Importance of Sub-Factors within Factors**

(1) Service capability- Service Capability subfactors (A) and (B) are equal in importance and more important than Subfactor (C) and (D); (C) and (D) are equal.

(2) Quality of Past Performance- Sub-factors and their components are equal in importance.

**4. Award (General Section)-** Multiple awards will be made on the zones in the General Section. The guarantee of cargo minimums for each route will be allocated on the route. Best value will be evaluated for each sub CLIN within each route. Each sub CLIN will be annotated to show the ranking relative to other offerors, as BV1, BV2, etc. The BV1 MC will be awarded the portion of the cargo minimum associated with the CLIN. In all best value trade-off analysis awards even the lowest rated offeror will be awarded sufficient cargo to ensure full compliance with FAR 16.504(a)(2), i.e. more than nominal quantities and economically viable revenue based to support any accepted service.

**5. Award (Customer Service Section)-** A winner take all will be made for Customer service section for zone 1 and 7.

## V. PRICE

**Contract Price Evaluation-** Price evaluation for all proposed rates will be performed in accordance with FAR 15.404-1. A rate will not be considered for award should the Procuring Officer (PCO) determine that the rate are equal to or exceeds those rates set by the Public Service Commission of Puerto Rico.

The contracting officer will not consider an offer to be fair and reasonable, if an offeror's best value offer contains rates higher than the highest commercial service contract rate, or that are clearly and substantially in excess of the rates stated in comparable commercial service contracts to which the offeror is party, for the same trades and similar services.

**Option Year Price Evaluation -** Upon written notification of the Government's intent to exercise the option period, the Government during the option period will not make any distinct BV-1/BV-2 assignments as previously identified in the base period. Ordering Officers will make contemporaneous BV analysis for the selection of a MC for each booking based on a trade off of all non-priced factors and the associated option year prices.

(End of clause)

### 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL ITEMS (JUN 2003)

(a) Definitions. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.



Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; or

(2) Whose management and daily business operations are controlled by one or more women.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

\_\_\_ TIN:-----

\_\_\_ TIN has been applied for.

\_\_\_ TIN is not required because:

\_\_\_ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

\_\_\_ Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

\_\_\_ Sole proprietorship;

\_\_\_ Partnership;

\_\_\_ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other-----

(5) Common parent.

☐ Offeror is not owned or controlled by a common parent;

☐ Name and TIN of common parent:

Name-----

TIN-----

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it ( ) is, ( ) is not a small business concern.

(2) Veteran-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.) The offeror represents as part of its offer that it ( ) is, ( ) is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, for general statistical purposes, that it ( ) is, ( ) is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it ( ) is, ( ) is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). (Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it ( ) is, a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

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(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. (Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.)

(i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it ( ) is, ( ) is not an emerging small business.

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).) Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Average Annual

Number of Employees Gross Revenues

\_\_\_ 50 or fewer \_\_\_ \$1 million or less

\_\_\_ 51 - 100 \_\_\_ \$1,000,001 - \$2 million

\_\_\_ 101 - 250 \_\_\_ \$2,000,001 - \$3.5 million

\_\_\_ 251 - 500 \_\_\_ \$3,500,001 - \$5 million

\_\_\_ 501 - 750 \_\_\_ \$5,000,001 - \$10 million

\_\_\_ 751 - 1,000 \_\_\_ \$10,000,001 - \$17 million

\_\_\_ Over 1,000 \_\_\_ Over \$17 million

(9) (Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns or FAR 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.)

(i) General. The offeror represents that either--

(A) It ( ) is, ( ) is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It ( ) has, ( ) has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a

decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(7)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. (The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: \_\_\_\_\_.)

(10) HUBZone small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, as part of its offer, that--

(i) It ( ) is, ( ) is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It ( ) is, ( ) is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. (The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.) Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Certifications and representations required to implement provisions of Executive Order 11246--

(1) Previous Contracts and Compliance. The offeror represents that--

(i) It ( ) has, ( ) has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the and

(ii) It ( ) has, ( ) has not, filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that--

(i) It ( ) has developed and has on file, ( ) has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It ( ) has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act --Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products

manufactured in the United States that do not qualify as domestic end products. The terms ``component," ``domestic end product," ``end product," ``foreign end product," and ``United States" are defined in the clause of this solicitation entitled ``Buy American Act--Supplies."

(2) Foreign End Products:

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act--North American Free Trade Agreement--Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms ``component," ``domestic end product," ``end product," ``foreign end product," and ``United States" are defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act."

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act":

NAFTA Country or Israeli End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act--North American Free Trade Agreements--Israeli Trade Act Certificate, Alternate I (May 2002). If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act":

## Canadian End Products:

Line Item No.

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 -----

(List as necessary)

(3) Buy American Act--North American Free Trade Agreements--Israeli Trade Act Certificate, Alternate II (May 2002). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--North American Free Trade Agreement--Israeli Trade Act":

## Canadian or Israeli End Products:

Line Item No.

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Country of Origin

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(List as necessary)

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

## Other End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin

country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). The offeror certifies, to the best of its knowledge and belief, that --

(1) The offeror and/or any of its principals ( ) are, ( ) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) ( ) Have, ( ) have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and ( ) are, ( ) are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (j)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed End Product

Listed End Product	Listed Countries of Origin:
.	.
.	.
.	.

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (j)(1) of this provision, then the offeror must certify to either (j)(2)(i) or (j)(2)(ii) by checking the appropriate block.]

( ) (i) The offeror will not supply any end product listed in paragraph (j)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

( ) (ii) The offeror may supply an end product listed in paragraph (j)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

#### 52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (FEB 2002)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement or any excusable delay, setting for the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.



(i) Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

#### **ADDENDUM TO FAR 52.212-4**

#### **COMMERCIAL TERMS AND CONDITIONS – COMMERCIAL ITEMS**

Contract Clause FAR 52.212-4, Contract Terms and Conditions – Commercial Items, incorporated in full text is hereby tailored to reflect the following changes to Paragraph (c), Changes, in accordance to FAR 12.302(a):

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties except for items/provisions delineated in the contract as within the authority of the CO. Where the Government requests a change requiring written agreement of the parties, the parties agree to undertake best efforts to affect the requested change. Changes in the terms and conditions of a delivery/task/shipping order issued under the contract may be made in writing on a unilateral basis by the Government.

- E. If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, the CO must make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- F. The MC must assert its right to an adjustment under this clause within thirty (30) days from the date of the receipt of the written order.
- G. If the MC's proposal includes the cost of property made obsolete or excess by the change, the CO shall have the right to prescribe the manner of disposition of the property.
- H. Failure to agree to any adjustment shall be a dispute.

(g) Invoice. PowerTrack shall be the primary method of payment for this contract, however, for billable items outside the ability of PowerTrack, paragraph g above is in effect for invoicing.

(End of clause)

#### **52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (JUN 2003)**

(a) The Contractor shall comply with the following Federal **Acquisition Regulation** (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233-3, Protest after Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: (Contracting Officer check as appropriate.)

  X   (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

- \_\_\_ (2) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999) (U.S.C. 657a).
- \_\_\_ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (U.S.C. 657a).
- \_\_\_ (4) (i) 52.219-5, Very Small Business Set-Aside (JUNE 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
- \_\_\_ (ii) Alternate I (MAR 1999) to 52.219-5.
- \_\_\_ (iii) Alternate II to (JUNE 2003) 52.219-5.
- \_\_\_ (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
- \_\_\_ (ii) Alternate I (OCT 1995) of 52.219-6.
- \_\_\_ (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
- \_\_\_ (ii) Alternate I (OCT 1995) of 52.219-7.
- \_\_\_ (7) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637 (d)(2) and (3)).
- \_\_\_ (8)(i) 52.219-9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C. 637(d)(4)).
- \_\_\_ (ii) Alternate I (OCT 2001) of 52.219-9.
- \_\_\_ (iii) Alternate II (OCT 2001) of 52.219-9.
- \_\_\_ (9) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).
- \_\_\_ (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUNE 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- \_\_\_ (ii) Alternate I (JUNE 2003) of 52.219-23.
- \_\_\_ (11) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (12) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (13) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).
- \_\_\_ (14) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (SEP 2002) (E.O. 13126).
- \_X\_ (15) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
- \_X\_ (16) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

☒ (17) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

☐ (18) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

☒ (19) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

☐ (20)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

☐ (ii) Alternate I (AUG 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

☒ (21) 52.225-1, Buy American Act--Supplies (JUNE 2003) (41 U.S.C. 10a-10d).

☒ (22)(i) 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act (JUNE 2003) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

☐ (ii) Alternate I (MAY 2002) of 52.225-3.

☐ (iii) Alternate II (MAY 2002) of 52.225-3.

☐ (23) 52.225-5, Trade Agreements (JUNE 2003) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

☒ (24) 52.225-13, Restrictions on Certain Foreign Purchases (JUNE 2003) (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

☐ (25) 52.225-15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).

☐ (26) 52.225-16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).

☐ (27) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☐ (28) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

☒ (29) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

☐ (30) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

☐ (31) 52.232-36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).

☐ (32) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

☒ (33)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

☐ (ii) Alternate I (APR 1984) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

\_\_\_\_ (1) 52.222-41, Service Contract Act of 1965, as Amended (MAY 1989) (41 U.S.C. 351, et seq.).

\_\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act--Price Adjustment (February 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to PreDecemberessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, et seq.).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.219-8, Utilization of Small Business Concerns (October 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (April 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (April 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

#### 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (JUN 2003) (DEVIATION)

(a) Comptroller General Examination of Record. The Contractor agrees to comply with the provisions of this paragraph (a) if the contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times, the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(b) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.219-8, Utilization of Small Business Concerns (October 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (April 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, et seq.).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (April 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(c) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

#### 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Firm Fixed Price, Indefinite Delivery, Indefinite Quantity (IDIQ) contract resulting from this solicitation.

(End of clause)

#### 52.216-19 ORDER LIMITATIONS. (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than **1 FEU** (insert dollar figure or quantity), the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of the capacity of the vehicle;

(2) Any order for a combination of items in excess of the capacity of the vehicle; or

(3) A series of orders from the same ordering office within 3 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within one day(s) after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### 52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in

the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 31 March 2007 or any subsequent extensions IAW FAR 52.217.8.

(End of clause)

#### 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 45 days prior to the contract end date.

(End of clause)

#### 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 45 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 90 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed three years and six months.

(End of clause)

#### 52.228-9 CARGO INSURANCE (MAY 1999)

(a) The Contractor, at the Contractor's expense, shall provide and maintain, during the continuance of this contract, cargo insurance of \$150,000 per vehicle to cover the value of property on each vehicle and of \$150,000 to cover the total value of the property in the shipment.



(b) All insurance shall be written on companies acceptable to Military Traffic Management Command, and policies shall include such terms and conditions as required by the Contracting Officer. The Contractor shall provide evidence of acceptable cargo insurance MTAQ-G, Contracting Officer before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

“It is a condition of this policy that the Company shall furnish--

(1) Written notice to Military Traffic Management Command at 200 Stovall Street, Room 12S67, MTAQ-G, Alexandria, Virginia 22332, 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (1) of this statement, not less than 15 days prior to the expiration of any current policy on file with the Contracting Officer at MTAQ-G.

(End of clause)

#### 52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Contracting Officer, MTAQ-G, 200 Stovall Street, Hoffman II Bldg., Alexandria, VA 22332-5000

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

#### 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

[www.farsite.hill.af.mil](http://www.farsite.hill.af.mil)

(End of provision)

#### 252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JUN 2003)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

☒ 52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207).

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

☐ 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

☐ 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

☐ 252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

☐ 252.225-7001 Buy American Act and Balance of Payment Program (MAR 1998) (41 U.S.C. 10a-10d, E.O. 10582).

☐ 252.225-7012 Preference for Certain Domestic Commodities (FEB 2003) (10 U.S.C. 2533a).

☐ 252.225-7014 Preference for Domestic Specialty Metals (APR 2003) (10 U.S.C. 2533a).

☐ 252.225-7015 Preference for Domestic Hand or Measuring Tools (DEC 1991) (10 U.S.C. 2533a).

☐ 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (APR 2003) (☐ Alternate I) (APR 2003) (10 U.S.C. 2534 and Section 8099 of Public Law 104-61 and similar sections in subsequent DoD appropriations acts).

☐ 252.225-7021 Trade Agreements (APR 2003) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

☐ 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

☐ 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

☐ 252.225-7036 Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payment Program (APR 2003) (☐ Alternate I) (APR 2003) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

☐ 252.225-7038 Restriction on Acquisition of Air Circuit Breakers (APR 2003) (10 U.S.C. 2534(a)(3)).

☒ 252.227-7015 Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).

☒ 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

☒ 252.232-7003 Electronic Submission of Payment Requests (MAR 2003) (10 U.S.C. 2227).

☒ 252.243-7002 Certification of Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

☒ 252.247-7023 Transportation of Supplies by Sea (MAY 2002) (☐ Alternate I) (MAR 2000) (☐ Alternate II) (MAR 2000) (Alternate III) (MAY 2002) (10 U.S.C. 2631).

X   252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (Federal Acquisition Regulation 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (MAR 1998) (10 U.S.C. 2533a).

252.247-7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631)

(End of clause)